

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)**ADDENDUM TO THE FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 6.2, Articles 1 through 4, Sections 3195.1 through 3195.14  
of the Permanent Amusement Ride Safety Orders

**Inspection of Permanent Amusement Rides, Including Aquatic Devices**

There are no further modifications to the information contained in the Initial and Final Statement of Reasons except for the following minor editorial and nonsubstantive corrections.

In response to Mr. Thomas' Comment 5 and Mr. Paule's Comment 3, the term "device" in Section 3195.3(a)(3)(B)8. has been deleted.

In response to Mr. Thomas' Comment 8, the word "was" has been replaced with the phrase "has been" in Section 3195.4.

**SUMMARY AND RESPONSE TO 15-DAY WRITTEN COMMENTS**

Kathy Fackler, Saferparks, by letter dated February 27, 2003.

**Comment 1:**

The commenter supports the amendment of Section 3195.3(a)(4)(D). A significant percentage of accidents are caused by a lack of communication between manufacturers, operators and patrons. The amended language will help attain the goal of having a documented operating policy that identifies the type of patron that can safely ride, how to protect that patron, and how to restrict riders and/or educate patrons on restrictions.

**Response:**

The Board thanks Ms. Fackler for her support of this amendment. No further modification of the proposal is necessary in response to this comment.

**Comment 2:**

Expanding the requirements for CPR trained personnel in Section 3195.7(c) and to base staff coverage on a performance measure rather than a minimum number is an improvement.

**Response:**

The Board thanks Ms. Fackler for her support of this amendment. No further modification of the proposal is necessary in response to this comment.

Comment 3:

The commenter is concerned that the amendments to Section 3195.12(c)(4) will undermine the Division's ability to thoroughly investigate accidents. The terms "representative witnesses" and "representative number of witnesses" are too vague and the original language should be restored. Under the original language, the commenter does not believe that operators would be cited if they did not interview every witness in situations when a large number of patrons were present and the park did not talk to everyone present. It is not in the park's self-interest to adequately pick a representative or representative number of witnesses.

Response:

The Board believes that the phrase representative number of witnesses is clear and necessary. The term representative is commonly understood and is not vague. Parks that choose to skirt the obligation to interview a representative number of persons would probably also skirt their obligation if they were required to interview all witnesses. The Division in its investigation can interview all witnesses it believes have relevant information and will make its own independent determination on the probable cause of an accident. Therefore, the Board declines to restore the original language or make any further modifications in response to this comment.

The Board thanks Ms. Fackler for her additional comments and participation in the Board's rulemaking process.

Jason Herrera, Herrera Safety Group, by letter received March 3, 2003.

Comment 1:

The commenter has read the amendment of Sections 3195.7 and 3195.11(b) and feels that new information he is aware of would warrant changes to Section 3195.7. The commenter stated that he has pictures of parks and a 50-page manual entitled "Amusement Park Injury & Wellness." The commenter would welcome the opportunity to provide the aforementioned literature and author changes to Sections 3195.7 and 3195.11(b). Section 3195.7 is important and will have an immediate impact.

Response:

The Board agrees that Section 3195.7 is important and recommends that the commenter contact the Division staff and share his information with them since they will be enforcing and providing consultation on the proposed requirements. The Board is not aware of any new information that would necessitate changes to the performance-oriented language in amended Sections 3195.7

and 3195.11. Therefore, the Board declines to make any further modifications in response to this comment.

The Board thanks Mr. Herrera for his comment and participation in the Board's rulemaking process.

David Thomas, Universal, by letter dated March 5, 2003.

Comment 1:

The commenter supports the amendment of Sections 3195.3, 3195.4, and 3195.7 with respect to incorporating by reference the ASTM standards. The enabling legislation, AB 850 recognizes the value of incorporating consensus standards specifically in that rides conform to "ASTM Standard F770-03 and F853-93".

Response:

The Board thanks Mr. Thomas for his support of this amendment. With regard to AB 850 specifying that rides conform to ASTM F770-03 and F853-93, the proposal did incorporate the most current and correct versions of those standards (F770-93 and F853-98). No modifications were made to the incorporation of those two ASTM standards, so 15-day comments on those two standards cannot be considered during this comment period. Therefore, no further modification of the proposal is necessary in response to this comment.

Comment 2:

The commenter supports the modifications made in response to his original comments regarding the need to distinguish between new and existing rides.

Response:

The Board thanks Mr. Thomas for his support of this amendment.

Comment 3:

The commenter suggests making some clarifying amendments to the definition of "authorized person" in Section 3195.2(d)(4).

Response:

Subsection 3195.2(d)(4) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 4:

The commenter states that ASTM 1159-02 does not require manufacturers to provide all documents to an owner/operator of a ride. Therefore, Section 3195.3(a)(1) should be amended to acknowledge that documents that are not required to be delivered should not be required to be obtained by the owner/operator.

Response:

Subsection 3195.3(a)(1) was modified during the 15-day comment period to update the ASTM reference to the most current 2002 version. No change was made in the ASTM document on this issue therefore this comment is not required to be considered during this stage of the rulemaking process.

Comment 5:

The commenter suggests making some clarifying amendments to section 3195.3(a)(3)(B)(8) with regard to deleting the term “device” as was done in the text of subsection (B)(1) proposed for consideration during the 15-day comment period.

Response:

The term “device” in subsection 3195.3(a)(3)(B)8. has been deleted. The modification is a nonsubstantive change.

Comment 6:

Three changes should be made to the modified language of Section 3195.3(a)(4)(D). Subsection 1. should be revised to include the phrase “which are present at the ride” to acknowledge that some rides do not have or require restraints. The phrase “in a manner that is safe for all patrons” should be deleted from subsection 2., since it is repetitive of subsection (D) and unnecessary. An additional sentence should be added to the note to subsection (D) to state that an owner is not required to comply with this subsection in any manner that would violate laws guaranteeing civil rights, privacy, non-discrimination, or reasonable accommodation. Without inclusion of this acknowledgement in the note, owners and operators will have no assurance that their compliance with various anti-discrimination requirements will be accorded appropriate weight in any subsequent administrative or enforcement action.

Response:

The Board does not believe that any of the suggested changes are necessary or will add clarity to the proposed regulations. With respect to the commenter’s third suggestion, which calls for reinstating language similar to that which was originally proposed, the Board has concluded that the proposed requirement now stated in Section 3195.3(a)(4)(D) does not call for any activity that is violative of existing laws or rights. To add the language proposed by the commenter would suggest that Section 3194.3(a)(4)(D) may reasonably be interpreted as requiring

discriminatory or otherwise unlawful activity, and this would create confusion about the intent and meaning of the subsection.

Comment 7:

The commenter suggests adding the phrase “during any Division inspection” to Section 3195.3(b).

Response:

Subsection 3195.3(b) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 8:

The commenter suggests making a grammatical change to replace the word “was” with the phrase “has been” in Section 3195.4.

Response:

The Board has made the grammatical change in Section 3195.4.

Comment 9:

The commenter suggests deleting the word “around” from Section 3195.7(c) and replacing it with the word “at” and adding the phrase “at sufficient location(s)” in subsection (1). The suggested change would allow facilities that are small enough to be covered from one location to avoid having to distribute their staff at different locations in the facility. A comma should be added to subsection (1) to make it grammatically correct.

Response:

The Board does not consider the proposed change to be necessary. The “bottom line” of the stated requirement is to ensure the presence in sufficient number of personnel properly trained, sufficiently equipped, and readily available to provide first-aid and CPR to an injured patron if necessary. The sufficiency of the number, by the terms of this language, is determined by what is necessary to ensure ready availability. There undoubtedly exist small operations at which the number and location of patrons present at any time will be such that one first-aid provider can easily meet this requirement. On the other hand, larger operations, because of the number and dispersion of patrons who may be present, will not be able to ensure ready availability by having only one first-aid provider.

Comment 10:

The commenter suggests adding the phrase “reasonably be expected to” to several sentences in Section 3195.9(e)(1) and (2) and “the ride is” to Section 3195.9(e)(1).

Response:

Section 3195.9(e) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 11:

The commenter suggests adding the phrase “as specified by the manufacturer” along with other changes to the language of Section 3195.9(f).

Response:

Subsection 3195.9(f) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 12:

The commenter suggests adding the phrase “reasonably be expected to” to Section 3195.11(c).

Response:

Section 3195.11(c) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 13:

The commenter suggests adding the phrase “if any” and rewording Section 3195.13(a)(2). The commenter also suggests adding the word “reasonably” to subsection (c).

Response:

Section 3195.13(a)(2) and (c) have not been modified and therefore this comment is not required to be considered during this stage of the rulemaking process.

The Board thanks Mr. Thomas for his comments and participation in the Board’s rulemaking process.

Allen F. Weitzel, Santa Cruz Seaside Company, by letter dated March 6, 2003.

Comment 1:

The commenter had a question about what is considered a reportable incident under the definition in Section 3195.2(b)(1).

Response:

Subsection 3195.2(b)(1) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 2:

The commenter supports the change to the definition in Section 3195.2(b)(2).

Response:

The Board thanks the commenter for his support of the modification.

Comment 3:

The commenter states that Section 3195.3(a)(4)(D) places the owner/operator in the middle of an access quandary between complying with the regulation and the ADA requirements.

Response:

See response to the similar Comment 6 made by Mr. Thomas.

Comment 4:

The commenter understands the need for first-aid resources at the park but has concerns that the requirements of Section 3195.7(c)(1)-(3) are burdensome and impose a staffing infrastructure. If rides are safe why require first-aid trained employees around the park? Second, is the reference to Section 3400 an attempt to overlap the scope and requirements of the worker requirements with the ride/patron requirements? Mr. Herrera's original comments appear to be lobbying for increasing his business. The regulation should not pinpoint how or by whom first-aid/CPR is made available, only that it is available on-site.

Response:

Please see response to Comment 9 by Mr. Thomas. The Board agrees that the goal is for rides to be safe enough so that there will never be a need for first-aid. However, the potential for accidents cannot be eliminated such that failure to ensure the ready availability of competent first-aid can be justified. The reference to Section 3400 recognizes the need for parks to maintain proper first-aid/CPR equipment for their employees, and incorporates that concept as a necessary part of ensuring adequate first-aid capability for emergencies involving patrons. The Board believes that the currently-proposed language contains the minimum detail necessary to ensure adequate capability to provide a competent first-aid response in the event of an

emergency. Therefore, the Board declines to make any further modifications in response to this comment.

Comment 5:

The commenter is concerned about the obligations to retain training records in Section 3195.12(a)(1).

Response:

Section 3195.12(a)(1) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 6:

The commenter was concerned about an annual review he received from Division inspectors and he felt that these proposed technical regulations were referenced by the inspectors.

Response:

A comment about enforcement practices should be directed to the Division and does not relate to any modification made during the 15-day comment period. Therefore this comment is not required to be considered during this stage of the rulemaking process.

The Board thanks Mr. Weitzel for his comment and participation in the Board's rulemaking process.

Boyd Jensen, Garrett & Jensen, by letter dated March 7, 2003.

Comment 1:

The commenter suggests some grammatical changes to the definition of "incident" in Section 3195.2(b). Subsection (2) uses the phrase "reasonably and substantially appears," which should be clarified.

Response:

That part of Section 3195.2(b) was not modified during the 15-day comment period and therefore this comment is not required to be considered during this stage of the rulemaking process.



Comment 2:

The commenter expresses some grammatical concern with the term “ensure” and how it is used several times in Section 3195.3(a)(4)(D). That term would make it impossible for an owner/operator to achieve compliance. The commenter gave an example of how he believes it would be impossible to ‘ensure’ the safe operation of the ride because a patron could disregard warnings and remove their seat belt.

Response:

The term “ensure” is in common use in Title 8, including the “administrative regulations,” Section 344.5 et seq. While it denotes a high level of importance assigned to the requirement, it does not make compliance unreasonable or impossible. It is unreasonable to interpret the term as requiring the owner or operator to something that is impossible. Therefore, the Board declines to further modify this subsection in response to this comment.

Comment 3:

The commenter feels that Section 3195.9(h)(4) as modified is unreasonable, unintelligible, and calls for a condition that is unsafe. The subsection should be deleted or reworded to allow the ride to immediately restart once the emergency has been eliminated. The example of bumper cars was given where an operator has a ‘stop switch’ they use when patrons operate the cars unsafely. Once the unsafe behavior is corrected the power to the ride is resumed.

Response:

The Board disagrees that the modified language needs to be reworded. Rides should not be capable of immediately restarting without an operator first determining that the ride is safe. Once the emergency has been eliminated and the power restored to the ride then the operator should make the decision to restart the ride. The bumper car example is consistent with the ride being able to restart after the operator eliminates the hazard. Therefore, the Board declines to make the further modification.

The Board thanks Mr. Jensen for his comments and participation in the Board’s rulemaking process.

Jeffery Paule, The Walt Disney Company, by letter dated March 7, 2003.

Comment 1:

The commenter states that Section 3195.3(a)(1) should be amended after the reference to ASTM 1159-02 to acknowledge that not all documents are provided by the manufacturer of a new ride. As is the case with Exception No. 2 provided for existing rides, only documents that are available and required to be delivered pursuant to ASTM 1159-02 should be required to be obtained by the owner/operator.

Response:

Subsection 3195.3(d)(1) was modified during the 15-day comment period to update the ASTM reference to the most current 2002 version. No change was made in the ASTM documentation requirement on this issue therefore this comment is not required to be considered during this stage of the rulemaking process.

Comment 2:

The commenter suggests that the word restrictions be replaced with the word specifications in the Note to Exception No. 1 in Section 3195.3(a)(1). The ASTM document refers to specifications so using the word restriction is not correct.

Response:

That part of the Exception No. 1 to Section 3195.3(a)(1) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 3:

The commenter suggests making some clarifying amendments to Section 3195.3(a)(3)(B)(8) with regard to deleting the term “device” as was done in the text of subsection (B)(1) proposed for consideration during the 15-day comment period.

Response:

The term “device” in Section 3195.3(a)(3)(B)8. has been deleted. The modification is a nonsubstantive change.

Comment 4:

The commenter suggests that the word “reasonably” be added before the word “necessary” in the Exception to Section 3195.3(a)(4)(A).

Response:

The Exception to Section 3195.3(a)(4)(A) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 5:

Three changes should be made to the modified language of Section 3195.3(a)(4)(D). First, subsection 1. should be deleted and replaced with the phrase “Procedures to ensure that all passenger restraint mechanisms which are present on the ride are properly engaged.” The new language acknowledges that some rides do not have or require restraints and that an operator has no control of restraints after the ride is dispatched. The phrase “in a manner that is safe for all patrons” should be deleted from subsection 2., since is repetitive of subsection (D) and unnecessary. An additional sentence should be added to the note to subsection (D) that recognizes that an owner is not required to comply with this subsection if it is a violation of any laws guaranteeing civil rights, privacy, non-discrimination or reasonable accommodation.

Response:

See response to Comment 6 provided by Mr. Thomas. With regard to the issue of modifying subsection 1. to address the issue of operator control after the ride is dispatched, the Board disagrees that operators have no control after the ride is dispatched. Observation of the patrons during the ride and/or electronic warning systems are commonly used in rides to determine if restraint mechanisms are no longer engaged. Therefore, the Board declines to further modify the subsection.

Comment 6:

The commenter suggests that the words “and attendants” be deleted from Section 3195.3(a)(4)(E).

Response:

Section 3195.3(a)(4)(E) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 7:

The commenter suggests that the word “reasonably” be added before the word “necessary” in the Exception to Section 3195.3(a)(6).

Response:

That part of the Exception to Section 3195.3(a)(6) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

Comment 8:

The commenter suggests deleting the confusing word “around” from Section 3195.7(c) and replacing it with the word “at.”

Response:

The Board declines to make the further modification based on the rationale provided in the responses to similar comments provided by Mr. Thomas (Comment 9) and Mr. Weitzel (Comment 4).

Comment 9:

The commenter suggests that the words “as necessary” are confusing and should be replaced with “as required by the manufacturer” in Section 3195.9(f)(1).

Response:

Section 3195.9(f)(1) has not been modified and therefore is not required to be considered during this stage of the rulemaking process.

The Board thanks Mr. Paule for his comments and participation in the Board’s rulemaking process.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial and Final Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.